THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 442 of 2004
Old F.A.F.O. No. 411 of 1988

Uttar Pradesh State Road Transport Corporation
Through the Regional Manager, Dehradun

… Appellant.

Versus

1. Gulam Husain, S/O late Mohd. Ismail
   (father of the deceased Zakir Husain)
2. Smt. Shahida Begum wife of Gulam Husain,
   (mother of the deceased Zakir Husain)
   Both residents of -6/228, Jamuna Bihar, Delhi-53.
   (Claimants)

… Respondent.

Sri Ashish Kumar Joshi, Advocate, learned counsel for the appellant.
Sri S.K.Mandal, Advocate, learned counsel for respondent.

Date April 17, 2006.

(Hon'ble B.S. Verma, J.)

This appeal has been preferred under Section 110-D of the Motor Vehicles Act, 1939 (***in short the Act***) against the interim award under Section 92-A of the Act, dated 19-1-1988 passed by the Motor Accident Claims Tribunal/District Judge, Muzaffar Nagar (***in short the Tribunal***) in Motor Accident Claim Case No. 261 of 1995, Gulam Husain and another Vs. U.P.S.R.T.C., whereby interim compensation of Rs. 15,000/- was awarded to the claimants against the appellant payable within one month.

Brief facts of the case are that the claimants filed a claim petition under the provisions 110-A of the Act and moved an application Section 92-A of the Act for recovery of Rs. 15,000/- as compensation in respect of death of Zakir Husain who lost his life in a motor accident on 9-7-1985. The deceased was travelling in Car No. BIB 1772 from Delhi to Gangoh on Delhi Shamli road. At the relevant time, UPSRTC bus No. UGA-9024 came from the opposite direction, which was being driven rashly and negligently and

collided with the car with the result Zakir Husain sustained grievous injuries and died on the spot.

The appellant UPSRTC contested the case by filing its written statement alleging therein that the petition under Section 92-A of the Act was not maintainable as the claimants have not impleaded the owner and insurer of the car in question. According to appellant the car was being driven rashly and negligently.

After considering the evidence led by the parties, the learned Tribunal has held that the petition under the provisions of Section 92-A of the Act cannot be defeated for the reason of non-impeadment of the owner and the insurer of the vehicle, the occupants of which had died in the accident. After dealing with the matter in detail, the learned Tribunal has allowed the claim petition for compensation of Rs. 15,000/- vide order dated 19-1-1988.

The impugned order has been assailed on the ground that the learned Tribunal erred in fastening the liability only upon the appellant, while it should have been shared by the owners of both the vehicles involved in the accident. The contention of the appellant is misconceived for the following reasons.

It is not disputed that the provisions of interim compensation are intended to give some immediate relief to the injured or the dependents of the deceased on the principle of no fault.

The record shows that the F.I.R. of the accident was lodged with the police station by Naeem Ahmad and a case was registered against the driver of the offending bus under Sections 279, 304-A and 427 I.P.C.

The learned Tribunal after taking into consideration the entire evidence on record had recorded a clear cut finding at page 15 of the impugned judgment that the petitioners have been able to

establish beyond any doubt that the accident in question had taken place on account of rash and negligent driving of the offending bus. After recording this finding, the petition under Section 92-A of the Act was allowed. Since a criminal case was initiated against the driver of the offending bus, the same was prima facie sufficient to show that the driver of the bus was responsible for the accident. In my view the learned Tribunal was justified in awarding interim compensation against the appellant on the principle of no fault. The appeal is devoid of merit.

The appeal is hereby dismissed. The impugned judgment and award allowing interim compensation of Rs. 15,000/- to the claimants against the appellant is affirmed. No order as to costs.

The amount in deposit with this Court, if any, be transmitted to the Motor Accident Claims Tribunal concerned for being paid to the claimant-respondent.

(B.S.Verma, J)

RCP